

January 28, 2004

The Honorable Carl R. Johnson, Chairman
Senate Environment Committee
Legislative Office Building---Room 104
Concord, NH 03301

SUBJECT: SB 468 RELATIVE TO SOLID WASTE MANAGEMENT

Dear Chairman Johnson and Members of the Committee:

Thank you for the opportunity to testify on SB 468. In 1991 the New Hampshire Legislature passed a bill setting forth the criteria for making a finding of public benefit in connection with an application to construct and operate a solid waste facility in New Hampshire. The criteria are codified in RSA 149-M:11 III and reflect a three part test to determine whether a proposed solid waste facility provides a substantial public benefit. Those criteria include:

- a. The short and long term need for a solid waste facility of the proposed type, size, and location to provide capacity to accommodate solid waste generated within the borders of New Hampshire.
- b. The ability of the proposed facility to assist the state in achieving the implementation of the hierarchy and goals under RSA 149-M:2 and RSA 149-M:3 which are source reduction, recycling and reuse, composting, waste-to-energy incineration, incineration without energy recovery and landfilling.
- c. The ability of the proposed facility to assist in achieving the goals of the state solid waste management plan, and one or more solid waste management plans submitted to and approved by the department under RSA 149-M:24 and RSA 149-M:25.

In addition, the means for giving consideration to the concerns of the citizens and governing bodies of the host municipality, county and district and other affected persons is already codified in RSA 149-M:11, IV in the obligation for the Department of Environmental Services (Department) to hold at least one public hearing in the host municipality to take testimony to identify those concerns.

The proposed legislation would amend RSA 149-M:11, IV(a) by adding the sentence, "Absent a compelling reason, the department shall find no public benefit if the governing body of a host municipality objects to the expansion or creation of a solid waste facility."

The Honorable Carl R. Johnson, Chairman

January 28, 2004

Page 2

The Department opposes the bill for several reasons. First, as a practical matter, the term "compelling reason" creates an undefined subjective standard for approval that persons of opposing opinion will never agree on. It is likely that every permit applicant will supply a "compelling reason" for a facility's existence, which facility opponents will dispute.

More significantly, the bill's language would prevent the Department from making solid waste facility siting decisions based on sound science and the applicable statutory, technical or environmental standards. It would effectively require the Department to defer to a local government's objections regardless of merit or countervailing regional or statewide solid waste disposal needs. The criteria presently used in making a finding of public benefit consider the short and long-term needs on a statewide basis, and also require the Department to include local input as part of the deliberative process. The Department does not support an amendment that would allow individual political entities to control efforts to ensure adequate disposal capacity for all of the state's citizens.

If you have any questions regarding this letter of testimony, please do not hesitate to call me or Anthony P. Giunta, PG at 271-2905.

Sincerely,

Michael P Nolin
Commissioner

CC: Senator John T Gallus
Senator Bob Odell
Senator Richard Green
Representative Ned Densmore
Representative Dave Woodward
Representative David H. Russell
Representative Robert L. Theberge